

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Miscellaneous Appeal No. 605 of 2001**

Ashok Kumar Bhagat S/o Bapurao, aged about 35 years, R/o Quarter No. 3/B,
Street No. 15, Sector-4, Bhilai, District Durg.

---- Appellant**Versus**

1. Sheikh Mahmood S/o Sheikh Mahmood R/o Kabristan Road, Gandhi Nagar,
Nagpur, Maharashtra (Driver).
2. Vahida Begum W/o Asgar Ali, R/o Maldarpura, Nagpur, Maharashtra (Owner)
3. The Oriental Insurance Company Limited, Nagpur Through its Branch Manager,
Divisional Office, Malviya Nagar, Durg.

---- Respondents

For Petitioner : Shri Narottam Lal Vishwakarma, Advocate.
For Respondent No. 3 : Shri Vinay Harit, Senior Advocate with Ms. Vijay
Laxmi Soni.

Hon'ble Shri Deepak Gupta, Chief Justice**Judgment on Board****08/07/2016**

1. This appeal by the claimant is directed against the award dated 11.05.2001 passed by the learned 4th Motor Accident Claims Tribunal, Durg (hereinafter called 'the Tribunal'), in Claim Case No. 71 of 2000 awarding a sum of Rs.20,000/- to the claimant.
2. The only point to be decided is what is the just compensation payable to the claimant. Therefore, it is not necessary to give the other facts relating to the accident.
3. From the evidence on record, it stands proved that after the claimant received injuries in an accident, he was admitted to JLN Hospital & Research Centre, Bhilai on 04.04.2000 and he was discharged on 17.04.2000 i.e. after 14

days. The claimant was suffering from head injury and cerebral concussion which is apparent from the admission and discharge records collectively exhibited as Exhibit P-10. During this period, the claimant also had to undergo Ultrasound. The diagnosis in his discharge record is as follows:

"Head Injury with cerebral concussion with C5 Radiculopathy with right plural effusion."

This basically means that the patient suffered head injury and due to this there was a concussion and there was some problem in his C-5 vertebra.

4. The learned Tribunal awarded only Rs. 20,000/-. The main ground of challenge is that the Tribunal has discarded the disability certificate (Exhibit P-12). It is urged by learned counsel for the Appellant that this could not have been discarded and should have been taken into consideration. Exhibit P-12 is a certificate issued by one Doctor who was examined as PW-3, Dr. V.S.Baghel, Medical Officer, District Hospital, Durg. In this certificate, the disability is basically in respect of sensory loss to the first and third finger of the right hand and patchy sensory loss of the right arm with neurological problems. It is not proved on record that Dr. V.S.Baghel is a Neurological Specialist. He was not one of the Doctors who treated the claimant initially. Normally, the practice is that when a person goes to get a disability certificate, especially from a Government Hospital, then a Board evaluates the disability and one of the members of the Board is normally a Doctor who is directly related with the nature of the disability. Therefore, if the disability relates to loss of vision, an Ophthalmologist must be a member of the Board. If it relates to fracture, then an Orthopedic Surgeon must be the member of the Board and if it is a neurological defect, one would expect that one member should be a Neurologist and no one else. Therefore, I am not satisfied with this disability certificate and the same is not taken into consideration.

5. However, as far as the compensation granted is concerned, in my view that is on the lower side.

6. The claimant may have been given free treatment in the hospital but he remained in the hospital for about 14 days. In India, the condition of hospitals is such that a patient has to be attended round the clock by one or more attendants. Therefore, at least two attendants per day are required to attend a patient. Even in the year 2000, the cost of food and attendance of one attendant could be taken at Rs. 200/- per day or Rs. 400/- for two attendants per day and for 14 days, it works out to Rs. 5,600/-.

7. The claimant may have got free treatment in Bhilai Hospital but there would be some minor expenses for special diet etc. which have not been paid and therefore, the claimant is held entitled for a sum of Rs. 5000/- on this count.

8. The claimant was an employee and he was in hospital for 14 days. Though, there is no clear cut evidence with regard to leave taken, this Court can take judicial notice of this fact that he could not have jumped out of the hospital bed and straightaway joined his duties. He would have rested for sometime at home and thereafter joined his duties. Therefore, I, on the basis of injuries suffered, assess that he remained out of duty for two months. Since his monthly salary was Rs. 7,500/- he is held entitled for a sum of Rs. 15,000/- on account of loss of monthly salary. Even if the salary may have been paid by the employer, the tortfeasor cannot take the benefit of that because that is an arrangement between the employer and the employee. This Court can also take judicial notice of the fact that in most of the Government Departments and Undertakings, an employee is entitled to encash leave at the time of his retirement and the claimant would not get benefit of this period of leave. Therefore, Therefore, he is awarded Rs. 15000/- under this head.

9. The claimant remained in hospital for 14 days and therefore he is awarded Rs. 7,500/- towards pain and suffering. Though I have discarded the medical certificate, it stands proved that there is some injury on spine of the claimant. This Court can take judicial notice of this fact that injury to the spine caused seldomly require care and attention throughout the life and and therefore, for future suffering, the claimant is awarded another sum of Rs. 15,000/-.

10. Therefore, the Appellant is entitled to a total compensation of Rs. 48,100/-. He shall also be entitled to interest at the rate of 9% per annum from the date of filing of the application till the date of actual payment.

11. The appeal is accordingly allowed. The award of the Tribunal is modified and the compensation is enhanced from Rs. 20,000/- to Rs. 48,100/- with interest as aforesaid.

Sd/-
(Deepak Gupta)
CHIEF JUSTICE